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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 645

IVAN C. MCLEOD, REGIONAL DIRECTOR OF THE SECOND REGION OF THE NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

GENERAL ELECTRIC COMPANY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY MEMORANDUM OF THE REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD

We reply here to respondent's suggestion (memorandum in opposition, pp. 11–12) that the petition for a writ of certiorari should be denied as moot because a new collective-bargaining agreement, effective for three years, has now been signed.

1. The duty to bargain collectively does not terminate with the signing of a collective-bargaining agreement. The duty remains in force, not only with respect to matters not resolved in the agreement, but with respect to disputes over the terms and mean-

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ing of the agreement. *Conley* v. *Gibson,* 355 U.S. 41, 46. Both aspects are present here. Important questions relating to wage differences are not covered in the new agreement and apparently are to be resolved in future negotiations.[1] And since the agreement contains only a limited arbitration clause,[2] major disputes under the agreement will also be left for negotiation.

In these negotiations the union will doubtless reassert its right to use a negotiating committee which includes members of other unions and the company will doubtless persist in refusing to negotiate with such a committee. The result will be a bargaining impasse that could result in a strike. We cannot agree, therefore, that the injunction (Pet. 67) is a dead letter or the case moot. *Labor Board* v. *Local 74, Carpenters,* 341 U.S. 707, 715.

2. We grant that the case has lost the urgency that moved us to apply to this Court for a stay of the court of appeals' judgment. We point out, however, that the signing of the new agreement does not detract from the importance of the question presented in our petition—namely, what standards should guide the district courts in the issuance of Section 10(j) injunctions.

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[1] See Appendix, *infra*, pp. 5–6 (memorandum convening meeting of union steering committee to plan further negotiations with respondent).

[2] See R. 493a, Bd. Exh. 3, pp. 51–63 (clause in previous agreement, carried over into new agreement without substantial modification).

3. Should this Court agree with respondent that the case is moot, the proper course would be, not to deny the petition, as respondent urges, but to grant the petition and remand with directions that the judgments of the court of appeals and of the district court be vacated. *United States* v. *Munsingwear,* 340 U.S. 36, 39–40; see *Mechling Barge Lines* v. *United States,* 368 U.S. 324.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,
National Labor Relations Board.

NOVEMBER 1966.

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APPENDIX

COMMITTEE ON COLLECTIVE BARGAINING,
1126 Sixteenth Street, N.W.,
Washington, D.C. 20036,
October 28, 1966.

Memorandum
To: Members of Steering Committee.
From: David Lasser, Chairman.

In order to plan our future activities, I am suggesting a meeting of the Steering Committee to be held Friday, November 18, 1966, at 10:00 A.M. At this time we might review our experiences and discuss a number of activities that might be undertaken.

Among these are the following:

1. Continued publication of "Unity" on a monthly basis so that we can keep exchanging information and experiences.

2. A campaign to help the southern and rural locals to get wage increases. The fact that we failed to get inequity adjustments in our contract does not prevent locals from filing grievances over wage rates that are out of line, at least in the GE chain.

This question of wage differentials remains an open matter that ought to be settled through our coordinated activities.

3. What kind of structure we should maintain during this period. For example: Should we maintain the same sub-committees as we have

before and having them keep working, getting material for future use?

There might be other matters you wish to suggest.

I believe it would be very helpful to all if each of us submits copies of the contracts that have been signed so that all Unions will have copies of our agreements.

This we might arrange to do at the meeting of the Steering Committee.

Appreciate hearing from you with regard to the meeting.

Cordial best wishes.

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